

E. H. FITZGERALD.

MAY 18, 1860.—Ordered to be printed.

MR. TAPPAN, from the Committee of Claims, made the following

## REPORT.

*The Committee of Claims, to whom was referred the petition of Major E. H. Fitzgerald, report:*

It appears that on the evacuation of Mexico by the United States army, thirty-five thousand dollars of the public funds were placed in charge of Major Fitzgerald, assistant quartermaster United States army, for transportation from Vera Cruz to New Orleans. This was in July, 1848. On his arrival at New Orleans one box containing two thousand dollars was found to have been abstracted from the place of its deposit. That it was stolen from and never recovered by Major Fitzgerald the committee have no doubt from the evidence submitted; but they are, nevertheless, of the opinion that the case is not one which presents any equitable claim upon the government for relief.

As a general rule Congress does not grant relief for such losses. Disbursing officers, and others having the custody of public funds, are allowed every reasonable safeguard, and are then held responsible for the funds intrusted to their care. Government does not insure them against loss, but, on the contrary, they are legally bound for the safe custody of funds intrusted to them in any and every contingency. The laws provide salaries and emoluments to induce public officers to encounter these risks, and their individual accountability sharpens and stimulates vigilance. Were government, as a general rule, to indemnify officers who lose its funds, a strong motive to personal and unremitting oversight would be destroyed, while to the dishonest and unprincipled a wide field would be opened for frauds upon the treasury.

Where, however, the strictest care and diligence have been used by the officer, and he is able to prove that no laches or negligence of any kind can properly be chargeable against him, Congress, in the exercise of a sound discretion, sometimes interposes for the relief of the sufferer. But this should be done with extreme caution, and strict proof should be required of the applicant for relief, otherwise we will hold out a direct temptation to the commission of frauds of the

grossest character, and offer premiums to negligence and inefficiency. Alexander Hamilton, while Secretary of the Treasury, in a report made by him on the 9th of December, 1791, upon a case referred to him, observed, that "from the great danger of abuse to which a principle of this nature is liable, it is conceived to be essential to the public safety that the utmost strictness and exactness should be observed in the manner of proceeding. Several circumstances," he adds, "appear necessary to be insisted upon, as, due caution and care on the part of the agent, full proof of the theft, and immediate notice to the proper superior department."

Tested by these rules, which your committee believe to be sound, and upon which the government has always acted in such cases, your committee are constrained to come to the conclusion that the petitioner has not made out a case which would justify the interposition of Congress in his behalf. He does not himself state how the money was kept, or what diligence was used to secure it; but it appears from the evidence which he has presented in the case that the specie was in small boxes, and was placed under the table in the officers' cabin. This was on the transport Alabama, which was crowded with troops on their return from Mexico to the United States. This place of deposit, it is certified, was designated by the captain of the boat as the safest on board, as there it was continually under the eyes of the officers in the cabin, except at night after bed-time, and always under the eyes of the sentinel, at the after hatchway, which is directly in front of the cabin door. There are general statements to the effect that "Major Fitzgerald used great care and diligence in securing and taking care of the funds," but there is no *fact* stated from which the committee could with any propriety arrive at the conclusion that there was anything like that caution and circumspection used which should at all times be required of an officer having charge of public funds. The money, according to his own showing, was in small boxes, thrown loosely under the table in the officers' cabin, a public room, and it does not satisfactorily appear that any precaution was used for its safety, other than the placing of a sentinel at the door or after hatchway. No person seems to know at what time during the voyage the lost box was abstracted. Whether or not any one ever looked at the boxes or counted or examined them in any way to see that all was secure during the passage does not appear. It was missed first when the boat arrived at New Orleans, and it is suggested that it must have been taken the night before. But this opinion seems to be founded on the supposition that there was no other time in which the thief could have escaped to the shore with his prize. It does not appear from the evidence what precaution, if any, was used to secure faithful and trustworthy sentinels, or what reasons Major Fitzgerald had for relying upon the honesty of those who were placed on duty. And without dwelling upon other defects in the testimony as it is presented, the committee will remark that the wonder seems to be not that one box was stolen, but that the others did not go in pursuit of it. No person or persons seem to have been arrested or examined in regard to the theft, and no notice (as far as we can judge from the evidence) was

given to the Treasury Department of the loss, and no claim was presented there for the amount.

The committee therefore report the following resolution and recommend its passage :

*Resolved*, That the petitioner is not entitled to relief.

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*Petition of Major E. H. Fitzgerald, praying for relief from the Congress of the United States on account of two thousand dollars of public money stolen from him in 1848.*

The undersigned petitioner most respectfully prays for relief from the Congress of the United States, under the following circumstances :

On the evacuation of Mexico by the United States army, thirty-five thousand dollars, public funds, were placed in charge of your petitioner, at Vera Cruz, on the 15th day of July, 1848, for transportation from that place to New Orleans, Louisiana, on board the transport Alabama, crowded with troops, in which he was a passenger. Upon your petitioner's arrival at New Orleans, one box, containing two thousand dollars, was found to have been abstracted from the place of its deposit, though a sentinel was at the door, and no clue could ever be found to it.

The continual reliefs of the sentinels rendered it impossible to determine during whose tour of duty it had been stolen. The vessel was anchored one whole dark, stormy, and rainy night in the Mississippi, just below New Orleans, and near the shore, and the box of money must have been carried on shore and concealed during that time. The loss was discovered early next morning, and the most minute search made without any success. A subsequent search was made, as the baggage of the troops was being removed without effect.

Your petitioner would respectfully further represent that the amount was advanced by some of his friends, and paid to the United States, thus leaving your petitioner nowise indebted to the United States.

Your petitioner further represents that he has not a cent in the world except his pay as a captain in the army ; and the debt, for the amount of which he has given his note, &c., must oppress him for many years, as it must be but a pittance he can save yearly by the utmost economy.

Your petitioner would furthermore represent to the honorable Congress of the United States, that he has been nearly ten years in his country's service, in every climate, from the lakes to Florida, from the Atlantic nearly to the Pacific ; that he has been in seven battles, and complimented for his conduct therein by the government with advanced rank. Your petitioner, be assured, speaks not of these things in a spirit of vanity, but with the hope that his services may be some small additional claim to your consideration in the matter of his petition.

Your petitioner prays that he may be refunded by the treasury of the United States two thousand dollars, advanced in lieu of the two thousand dollars public funds stolen from him under circumstances he could not control, in order that he may reimburse his friends that amount advanced by them to save your petitioner until he could apply to you for relief.

And your petitioner will ever pray.

E. H. FITZGERALD,  
*Brevet Major, U. S. Army.*

NORFOLK, Va., November 20, 1848.

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BILL.

THIRTY-SECOND CONGRESS, FIRST SESSION.—HOUSE OF REPRESENTATIVES.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the proper accounting officers of the treasury be, and they hereby are, authorized and directed, in the settlement of the accounts of Major E. H. Fitzgerald, assistant quartermaster United States army, to credit him with the sum of two thousand dollars, being the amount of public money stolen from him while the same was under his charge between Vera Cruz and New Orleans, in July, 1848.

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FORT CRAWFORD, WISCONSIN,  
December 16, 1848.

Having been called upon by Captain E. H. Fitzgerald, assistant quartermaster, U. S. A., to state my knowledge of the loss of a box of specie containing two thousand dollars, in July last, whilst on board United States transport steamship Alabama, commanded by Captain Baker, and also as to the care taken to protect said money, I herewith make the following certificate on HONOR:

I was regimental quartermaster of the regiment being transported to New Orleans on said transport, in July, 1848. Captain Fitzgerald, assistant quartermaster, was also on board with us, and had under his protection a large amount of money, which was placed under the table in the officers' cabin, (being contained in small boxes,) this place having been designated by the captain of the boat as the safest place on board to place it, as there it was continually under the eyes of the officers in the cabin, except at night after bed-time, and always under the eyes of the sentinel at the after hatchway, which is directly in front of the cabin door. I, also, being a disbursing officer, had public money to protect, and considering the cabin to be the safest place for it, had it brought there. There being many troops on board, the vessel was very much crowded. I also had a large amount of public property on board; some in the hold, some on deck, and in the

cabin. To protect this, as well as the money, I had sentinels posted at both hatchways. I was very particular in instructing them as to their duties; directed them not to allow anything to be removed, unless it was by my order, or unless he knew it belonged to the person taking it; and, in addition, directed the sentinel not to allow anything to be taken from the cabin, or permit soldiers to enter it unless on duty. These instructions were necessary for my safety, and served equally well to protect the money of Captain Fitzgerald as my own. Captain Fitzgerald knew what was required of the sentinels, and no doubt considered the care taken amply sufficient, as I did myself. I did not, I think, inform the sentinel that money was to be protected, but all public property, and private effects of officers. Had I informed him of the fact, it might have been a great temptation, and possibly have induced him to take part in abstracting it, as his position would give him an opportunity at night, when all were asleep, to do so with little risk of detection, could it be removed from the ship. I frequently visited the sentinels, and when I saw any neglect of duty, or any man on post who was not an intelligent one, had him relieved. The sentinels were relieved every two hours, so that it would be very difficult to ascertain on whose turn of duty the money was removed, were it done in the night.

We arrived at New Orleans late at night, (a dark and rainy one,) and anchored in the stream, not far from the shore. Orders were given by the commanding officer not to allow boats to come alongside, in order to prevent desertions, the introduction of liquor on board, as well as to guard against articles being carried off. Boats, however, came and went with impunity, except when officers were on the lookout. I witnessed this the next morning, and I suppose that during the night, when the officers had retired, no attempt was made by the sentinels to keep them off. It seems to me most probable that the money was taken at this time. Most probably the sentinel was either drunk or asleep. There would be no object in taking it out before we arrived at our destination, and it could not have been taken from the boat afterwards, as a thorough search was made. Captain Fitzgerald and myself examined every place where it could possibly be concealed, except the hold. No person was permitted to go below under any pretence until the steamboat came alongside to take us up the river, when the property was taken out of the hold, under the eyes of the officers. I afterwards, with another officer, took a light and examined the hold, but the box was not found. I considered at the time that Captain Fitzgerald used all the exertions that were necessary to protect the money. Indeed, if the place where the money was stowed was as safe as any other place, I do not know what other means he could have taken to protect it which would not have had the same disadvantages as could be attributed to the means he used. Captain Fitzgerald used all the exertions possible to discover it, whilst on the boat, by examination of the boat, as well as by questioning those whom he thought might give some clue to it, but nothing was elicited.

WINFIELD S. HANCOCK,  
*Brevet 1st Lieut. 6th Infantry, R. Q. M.*



FORT SCOTT, *Missouri*, December 2, 1848.

I hereby certify that the circumstances under which Captain Fitzgerald, assistant quartermaster, suffered the loss of a box containing \$2,000, placed in his charge by Captain Jordan, assistant quartermaster at Vera Cruz, for transportation to New Orleans, in July last, are such, in my opinion, as should exonerate him from all censure or pecuniary loss on account thereof. I was a fellow passenger of Captain Fitzgerald's, and, as I learned at the time, he was requested by Captain Jordan to take charge of a certain number of boxes containing specie, (the amount I do not recollect,) and deposit it at New Orleans for him. These, as I understood, were brought on board the steamer under the immediate direction of Captain Fitzgerald's clerk, and deposited under the table in the main cabin, occupied almost exclusively by the officers, this being the place indicated by the captain of the steamer as the best and safest place on board, he having no other suitable for the purpose. Most of the trunks of the officers on board were stowed in the same place, as were also a number of boxes of money in charge of Captain Woodbridge, 2d artillery, assistant commissary of subsistence. In this place every article of property was under an almost uninterrupted observation of the inmates of the cabin during the whole trip, by day and night. Sentinels were regularly and constantly posted in various parts of the steamer during the whole time the troops were on board. In short, no precaution or care was wanting to secure the complete security of the persons and property on the steamer. In all things, as well those relating to this particular matter of the money as those relating to his general duties as quartermaster, the care and attention of Captain Fitzgerald were zealous and unremitting. The steamer was very much crowded, though in this circumstance I can see nothing to make the money insecure. The Alabama arrived at New Orleans about half-past twelve m., on the morning of the 2d July, and there is a possibility that, in the stir and excitement of the occasion, the box might have been abstracted then, though *how* I cannot easily conceive, the boat being anchored in the stream, and there being no communication with the shore but by the boat's yawl, nor am I aware of any person leaving the steamer but its officers during that night. The box was missed in the morning when the discharge of freight was commenced, and the most active search was instituted in every direction by Captain Fitzgerald, with his characteristic promptness and zeal. I may not, in the statement above made, have conveyed so clearly or forcibly as I feel the attention and care bestowed by Captain Fitzgerald in regard to this matter, or produced such a sense of his just exemption from censure or loss as I desire; but any one who knows him, as I do, intimately, and knows his punctilious and devoted attention to all matters of official or personal character confided to him, would know that no imputation of neglect, inattention, or want of care could justly rest on him on account of the loss of this money.

A. CADY,  
*Brevet Major U. S. A.*

TREASURY DEPARTMENT, *February 24, 1852.*

SIR: I transmit herewith, with the papers, a report by the Third Auditor on the case of Major E. H. Fitzgerald, the papers relative to which were covered by your letter of the 17th instant.

Very respectfully, your obedient servant,

THOMAS CORWIN,  
*Secretary of the Treasury.*

Hon. O. S. SEYMOUR,  
*Committee of Claims, House of Representatives.*

TREASURY DEPARTMENT,  
*Third Auditor's Office, February 21, 1852.*

SIR: In compliance with the request contained in the letter of the Hon. O. S. Seymour, of the 17th instant, referred by you to this office for a "report," I have the honor to say the accounts of Major Fitzgerald have been examined, and will be reported in a few days, for revision, to the Second Comptroller of the Treasury, and until returned by that officer neither the "past" nor "present condition" of the same can be accurately ascertained. A general view, however, based on his own acknowledgments, taken in connexion with the result of the examination alluded to, may serve to throw some light on the subject.

In the 2d quarter of 1847, Major F. admits due the United States.....	\$12,323 98
In the 3d quarter of 1847, Major F. admits due the United States.....	14,445 02
In the 4th quarter of 1847, Major F. admits due the United States.....	943 37
In the 1st quarter of 1848, Major F. admits due the United States.....	762 46
In the 2d quarter of 1848, Major F. claims as due him	16,054 06
In the 3d quarter of 1848, Major F. admits due the United States.....	118 94
In the 4th quarter of 1848, and 1st quarter of 1849, Major F. admits due the United States.....	77,822 23
In the 2d and 3d quarters of 1849, Major F. admits due the United States.....	5,846 30
In the 4th quarter of 1849, Major F. admits due the United States.....	Balanced.
In the 2d quarter of 1851, Major F. admits due the United States.....	1 00

The present examination shows the following result :

Official balance due the United States, as stated, but not reported.....		\$48,258 55
Of this there appears to have been suspended.....	\$40,977 15	
Of this there appears to have been disallowed.....	1,707 32	
Of this referred to the Second Auditor.....	531 98	
Of this, subsistence.....	7 00	
	<hr/>	43,222 55
Leaving, if the above be allowed, a balance of.....		5,036 00
The former difference was.....	\$1,018 34	
Of which there is now admitted.....	997 96	
Leaving a further balance of.....	<hr/>	20 38
Showing an apparent balance due United States of.....		<hr/> <hr/> 5,056 38

The accounts of Major Fitzgerald do not show that the claim presented by him to the committee has ever been demanded of this office, and therefore nothing "favorable or adverse" can be said in regard to it. The papers are herewith returned.

I have the honor to be, with great respect, your obedient servant,  
JNO. S. GALLAHER,  
*Third Auditor.*

Hon. THOMAS CORWIN,  
*Secretary of the Treasury.*

N. B.—The foregoing statement includes \$86,460 36 received from civil fund in California, referable to the Secretary of War.

J. S. G.

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NEW YORK, *November 27, 1848.*

DEAR JOHN: I arrived here safely, but have been suffering since with the most excruciating influenza you can possibly imagine. I have secured my berth in the steamer Falcon, and shall leave here on the 1st of December certainly. The weather is exceedingly cold.

I have written to several officers to get additional certificates in the matter of the loss of *that money*, which I have requested them to send to you. Please transmit them to Mr. Atkinson, with the suggestion that money for my relief be appropriated from the fund accruing from the military contributions collected in Mexico. This fund was collected from the enemy, and a small portion of it might be applied to



relieve an actual loss of an officer who assisted in compelling its existence.

My best love to all at home—Mr. Reardon's, and Walter's, and Hunter and wife, and to sister Mary. Kiss the little ones for Uncle Edward.

I am, very affectionately, yours,

EDWARD.

Mr. JOHN C. DOYLE, *Norfolk, Va.*

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FORT CRAWFORD, WISCONSIN,  
*December 16, 1848.*

I certify, on honor, that every care was taken of a large sum of public specie by Captain Edward H. Fitzgerald, assistant quartermaster United States army, who was transporting it, on board the steamship Alabama, from Vera Cruz to New Orleans in the month of July, 1848; notwithstanding which, one box, containing, or invoiced as containing, two thousand dollars, was lost or stolen. It is presumed to have been stolen during the night the steamer arrived, and was anchored near the bank of the Mississippi river, below New Orleans; the night was exceedingly dark and rainy; the steamer was crowded with troops. Upon the discovery of the loss the next morning, at New Orleans, Captain Fitzgerald used every exertion, and made a thorough search throughout the vessel to recover the money, but was unsuccessful.

I further certify that a sentinel was, during the voyage, stationed at the entrance of the apartment (the cabin) which contained the money; but as he was relieved every two hours, it was impossible to tell, during the tour, of which particular one the theft was committed; and that the captain of the vessel assured Captain Fitzgerald that the place in which the money was deposited for the voyage was the safest place on board the vessel.

CHAS. S. LOVELL,  
*Captain 1st Infantry.*

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I, William F. Tilghman, do solemnly swear that I, as clerk to Captain E. H. Fitzgerald, assistant quartermaster United States army, did, on or about the fifteenth day of July, in the year of our Lord one thousand eight hundred and forty-eight, receive for, and did deliver to him, from Captain Thomas Jordan, assistant quartermaster United States army, at Vera Cruz, nine boxes of specie, public funds, being thirty-five thousand dollars, for transportation to New Orleans on board the United States transport steamer Alabama.

That on the arrival of these funds on board, by direction of Captain Fitzgerald, I applied to the captain of the transport, who indicated to me that which he considered the most secure part of the ship. The money was placed therein, with a sentinel at the door.

Upon the arrival of the transport at New Orleans, a box containing two thousand dollars was discovered to be missing, and every exertion was unsuccessfully made to recover it.

The ship arrived in the Mississippi river the morning of one day, and anchored during the night a short distance below the city of New Orleans, where I firmly believe the money was stolen and carried on shore.

Every care was taken of this money by Captain Fitzgerald and myself, and after the loss was discovered, every portion of the ship was minutely and carefully searched before any of the troops with which it was crowded were permitted to leave, and also subsequent to their leaving, and every other exertion that could be suggested was made to recover it.

WILLIAM H. TILGHMAN.

STATE OF VIRGINIA, }  
City of Norfolk, } ss:

Sworn to before me, a justice of the peace for said city, this 20th day of November, 1848.

G. B. COOKE.

I certify, on honor, that the utmost care was taken by Captain E. H. Fitzgerald, assistant quartermaster, of thirty-five thousand dollars, public funds, intrusted to him for transportation from Vera Cruz to New Orleans, by Captain Thomas Jordan, assistant quartermaster United States army, on or about the fifteenth of July, eighteen hundred and forty-eight, on board the United States transport Alabama, on which I was a passenger at the time; and that in the loss by him of a box containing two thousand dollars, no blame can be attached to him.

I further certify that it is my firm belief that the money was stolen by some person or persons on board of said steamer after its arrival in the Mississippi river, as we were nearly an entire day and night therein before arriving at New Orleans, and that every possible exertion was made to recover said money, but without effect.

I also certify that I have served with Captain Fitzgerald, being on the staff of General Worth as assistant commissary of subsistence, while he was the assistant quartermaster, and know that he ever used active exertions for the safety of the public funds intrusted to him.

F. WOODBRIDGE,  
Captain 2d Artillery.